



Department of Pesticide Regulation



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February 2, 2002

Ms. Marcia E. Mulkey, Director
Document Processing Desk (AMEND)
Office of Pesticide Programs (7504-C)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Ms. Mulkey:

The Department of Pesticide Regulation (DPR) reviewed the U.S. Environmental Protection Agency's (U.S. EPA's) *Pesticide Registration (PR) Notice 2001-X, Notice to Manufacturers, Formulators, Producers, and Registrants of Pesticide Products pertaining to Spray and Dust Drift Label Statements for Pesticide Products (PR-Notice)*. We appreciate the effort that U.S. EPA took in developing the PR-Notice. In issuing the PR-Notice, U.S. EPA tackled one of the most complex and controversial pesticide regulatory issues.

Over the past two years, we have worked in California to clarify our pesticide drift enforcement policy (attached) and amend our existing regulations. Since the outcome of the PR-Notice will have a direct effect on changes we may need to take on our regulations, we decided to postpone any proposed changes until a final PR-Notice is issued. We applaud your efforts and encourage you to continue with finalizing the rules.

In finalizing these rules, we believe that U.S. EPA should defer to states to make most of the regulatory and enforcement decisions on pesticide drift. Given these principles, the federal government does have an important role. U.S. EPA can and must establish a clear, national regulatory framework for states and applicators. To improve the final set of rules, we offer the following comments and recommendations for consideration. We have italicized comments provided by U.S. EPA's PR-Notice.

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U.S. EPA's definition implies that pesticide drift can be the movement of pesticides through the air after completion of the application:

"Spray or dust drift is the physical movement of pesticide droplets or particles through the air at the time of pesticide application or soon thereafter from the target site to any non- or off-target site. Spray drift shall not include the movement of pesticides to non- or off-target sites caused by erosion, migration, volatility, or windblown soil particles that occurs after application or application of fumigants unless specifically addressed on the product label with respect to drift control requirements."

DPR strongly contends that when pesticide drift occurs, the pesticide is not deposited on the target nor does it have any contact with the target. Therefore, we suggest a modification to the definition as follows:

Drift is the physical movement of pesticide through the air that is not deposited on the target at the time of application. Drift shall not include movement of pesticides and associated degradation compounds off the target site after the application caused by erosion, migration, volatility, evaporation, or windblown soil particles.

The PR-Notice provides U.S. EPA's guidance to applicants and registrants of pesticide products for appropriate labeling statements in controlling spray and dust drift. However, the recommendations within the guidance are not enforceable and do not provide a clear regulatory response designed to minimize, to the extent possible, potential occurrences of pesticide drift. We offer some suggestions to ensure that the intended rules can be enforced consistently across the country.

DPR understands that pesticide spray drift has been, and continues to be, of concern to U.S. EPA and shares in its responsibility to ensure that pesticide use does not cause unreasonable adverse effects to human health and the environment. However, DPR thinks that stronger measures are warranted in order to minimize potential instances of drift because guidance documents generally do not provide the mandates necessary to adequately enforce pesticide drift minimization requirements.

U.S. EPA contends that the new labeling statements provide improvements over current labeling which is inconsistent or inadequate, and, for many products, unclear to applicators and others. Although DPR agrees that the changes may be an improvement over current labeling, we think the statements continue to be vague and somewhat unenforceable. Allowing some variation by registrants will only lead to a lack of continuity and confusion for applicators.

As suggested, products applied as sprays and dusts or hand-held applications for all affected products, except home and garden products, would require the statement, *“Do not allow spray (or dust) to drift from the application site and contact people, structures people occupy at any time and the associated property, parks and recreation areas, nontarget crops, aquatic and wetland areas, woodlands, pastures, rangelands, or animals.”*

Taking into consideration U.S. EPA’s position which *“recognizes that some de minimus level of drift would occur from most or all applications as a result of the uses of pesticides,”* we think it is unrealistic to expect an applicator to comply with any statement or requirement suggesting they *“do not allow spray or dust to drift. . . .”* Label statements of this type create an unreasonable expectation that applicators can prevent pesticide drift from occurring. Consequently, such statements would automatically create use inconsistent with the label since we all agree that some amount of drift will most likely occur. We recommend statements of this type be omitted from the label all together or amended to state that during the application all necessary precautions should be used to minimize drift.

For ground boom and aerial applications, *“Use _____ (registrant to fill in blank with spray quality, e.g. fine or medium) or coarser spray according to ASAE 572 definition for standard nozzles or VMD for spinning atomizer nozzles.”*

The ASAE 572 definition for standard nozzles is not consistently recognized throughout the industry. Volume median diameter (VMD) is not a sufficient parameter because the VMD definition is unclear, inadequate, and does not take into consideration the small droplets or “fines” that are problematic during spray applications. References to VMD should include “volume median diameter” (Dv0.5) and droplet diameter below which 10 percent of the spray volume is contained (Dv0.1).

If application includes a no-spray zone, do not release dust at a height greater than 10 feet above the ground or the crop canopy. DPR thinks the ten-foot height specification above the ground or crop canopy should apply to all aerial applications regardless of whether or not the target site requires a no-spray zone. The ten-foot height specification is a management practice that should be followed at all times, unless the terrain is irregular, such as in some forestry and range land applications, and the interests of pilot safety precludes flying within ten feet of the crop or target.

The applicator also must use all other measures necessary to control drift. This is an open-ended statement that is extremely vague. How can an individual be expected to know “all other measures necessary to control drift”? It is more practical to state the intended pesticide drift minimization outcome or performance and expect applicators to use those best management practices they are most familiar with to accomplish the intended outcome or performance.

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For sprays, apply largest size droplets possible. This is in reference to the recommendation for hand-applied products, including home and garden products, to be applied as sprays or dusts. This standard is vague and in some circumstances may be unenforceable. Again, DPR would prefer that the intended pesticide drift minimization outcome or performance be stated and the applicator use the method(s) necessary to accomplish the intended outcome or performance.

DPR recommends that U.S. EPA consider the adoption of a “Drift Minimization Standard” (Standard) within Title 40 of the Code of Federal Regulations that addresses the recommendations set forth in the PR-Notice, taking into account DPR’s suggested revisions. The Standard would apply to products applied as sprays and dusts by aerial, ground boom, orchard or vineyard airblast, some chemigation methods, and hand-held application equipment. Application methods and drift minimization techniques would also be addressed. Examples of such methods may include specification of application height, droplet size, buffer zones, or prohibition of a particular application method.

The regulation would also require statements that must be placed on the pesticide label and labeling statements that incorporate the Standard, by reference, to reduce as much as possible the potential for pesticides to drift during the application. The Standard may also take into consideration additional labeling statements that may be appropriate for certain products, depending upon the potential risks from the labeled uses.

We appreciate the opportunity to comment on the PR-Notice. If you have any questions or require additional information, please contact Mr. Scott T. Paulsen, DPR’s Enforcement Branch Chief, at (916) 324-4100.

Sincerely,

original signed by

Paul E. Helliker
Director
(916) 445-4000

cc: Ms. Karen Heisler, Environmental Protection Specialist, U.S. EPA Region 9
Mr. Scott T. Paulsen, Chief